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Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination on its mission to Tunisia

Note by the Secretariat

The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination visited Tunisia from 1 to 8 July 2015 at the invitation of the Government. Pursuant to Human Rights Council resolution 30/6 and General Assembly resolution 70/42, the Working Group is mandated to monitor mercenaries and mercenary-related activities in all their forms and manifestations globally. In 2014, it decided to explore the growing phenomenon of foreign fighters in order to assess any possible linkages with mercenarism and the impact on human rights and the right of peoples to self-determination. The Working Group conducted a year-long study on foreign fighters in view of its report submitted to the General Assembly in 2015 (A/70/330). The mission to Tunisia was undertaken as part of the efforts to gather country-specific information for its second report for the Assembly, in 2016.

The Tunisian revolution in 2011 ended decades of authoritarian rule. The post-revolution period has, however, been fraught with challenges, including divisions between secularists and Islamists, violent demonstrations and protests, and reported assassinations of political leaders and terrorist attacks, that have destabilized the country. The Working Group took note of the widespread impact of radicalization and terrorist attacks perpetrated in the country. Radicalization has not only influenced events in Tunisia, but has also resulted in a growing number of Tunisians travelling abroad to join in combat forces, such as in the Syrian conflict. By the beginning of 2015, the total number of foreign fighters in Iraq and the Syrian Arab Republic were estimated to be in excess of 20,000, with Tunisia having one of the largest numbers of its citizens represented among them. Most fighters have reportedly joined *takfiri* or other extremist groups, such as Islamic State in Iraq and the Levant (ISIL).

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The negative impact and complexities of the foreign fighter phenomenon in Tunisia call for efforts that must be global, holistic, multi-dimensional and strategic. To better understand this phenomenon, the Working Group examined the issues of motivation, methods of recruitment and the human rights impact of these actors. It recommends a national strategic plan to respond to the diverse profiles and recruitment methods documented, to secure immediate, medium- and long-term impact, to balance punitive measures against social ones, and to ensure the comprehensive adoption of human rights standards in all its elements. It emphasizes the importance of a coordinated effort for de-radicalization and addressing motivational factors. A strong economy and job growth, with initiatives invest in youth employment in particular, are the pillars of any approach. The Working Group also urges full compliance of the new law on counter-terrorism with the State's obligations under international law and the Constitution of Tunisia. The Working Group also shared good practices from its global research on the overall theme of foreign fighters.

Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination on its mission to Tunisia*

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* Circulated in the language of submission and French only.

I. Introduction

1. The Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination visited Tunisia from 1 to 8 July 2015, at the invitation of the Government. The visiting delegation comprised the Chair-Rapporteur of the Working Group, staff members from the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Geneva, and interpreters.

2. The Working Group thanks the Government of Tunisia for its cooperation and openness, and for facilitating the mission during Ramadan and in the aftermath of the terrorist attack in Sousse, perpetrated only a few days before the visit. The delegation also thanks the staff of OHCHR in Tunisia for the support and assistance provided during the mission.

3. Pursuant to Commission on Human Rights resolution 2005/2, Human Rights resolution 30/6 and General Assembly resolution 70/142, the Working Group is mandated to monitor mercenaries and mercenary-related activities in all their forms and manifestations globally. The mandate includes the monitoring of the activities of private companies offering military assistance, consulting and security services on the international market, and their effects on the enjoyment of human rights, particularly the right to self-determination.

4. In 2014, the Working Group decided to explore the growing phenomenon of foreign fighters in order to assess any possible linkages with mercenarism and the impact on human rights and the right of peoples to self-determination. It conducted a year-long study, which included a number of expert meetings and panel events, and extensive research on the subject of foreign fighters in order to prepare its report submitted to the General Assembly in 2015 (A/70/330). The mission to Tunisia was undertaken as part of efforts to gather concrete information for its report.

5. During its visit, the Working Group held meetings in Tunis and Monastir, and in the prison of Mornaguia. The delegation was able to meet with various representatives from the executive, legislative and judicial branches of the State. In particular, it met with senior officials from the Ministry of Foreign Affairs; the Ministry of Justice, and magistrates and State prosecutors; the Ministry of Defence; the Ministry of the Interior; the Ministry of Women, Children and Family; and Members of Parliament, including the Chair of the parliamentary Commission on Rights, Freedoms and External Relations.

6. The delegation also met with representatives of civil society organizations, academics, relatives of foreign fighters or persons who have travelled to join conflicts abroad and returnees. Meetings were also held with representatives of the United Nations and other international organizations in the country.

II. Background and context of the mission

7. The Tunisian "revolution" in 2011 ended decades of authoritarian rule under the regimes of Habib Bourghiba and Zine el Abidine Ben Ali. It was the first of a series of uprising in the region, sometimes referred to as the "Arab spring", which also led to the outbreak of the Syrian crisis in 2011. The Tunisian revolution was the culmination of years of repression, social unrest and dissatisfaction with the country's poor economic situation, high unemployment, corruption, widespread poverty and increasing economic disparities among the regions in the country.

8. Several months after the revolution, Tunisia held its first democratic elections in October 2011, the majority of votes going to the Tunisian Islamic party, Ennahda. A

coalition (or troika) was formed with two other parties, the Democratic Forum for Labour and Liberties and Congrès pour la République. During the elections, an interim president was elected by the National Constituent Assembly in accordance with the constitutional law on the provisional organization of powers and public authorities. At the end of 2014, elections based on universal suffrage saw Beji Caid Essebsi become the first President of Tunisia under its new Constitution.

9. Although years of dictatorial rule had come to an end and Tunisians welcomed a new era of democracy, the post-revolution period has been fraught with divisions between secularists and Islamists, and racked by violent demonstrations and protests, reported assassinations of political leaders,[1] and terrorist attacks, which have destabilized the country. The Working Group draws attention in particular to the increasing number of radicalized individuals and the rise of violent extremism since the "revolution", often associated with hard-line Salafists, such as the Ansar al-Sharia in Tunisia (AST). Violent extremists have been reportedly linked to the assassination of two prominent opposition politicians in 2013, clashes with law enforcement authorities resulting in multiple deaths, and the terrorist attack in March 2015 in the Bardo museum, which claimed more than 20 lives.

10. A few days before the Working Group conducted its mission, more than 30 tourists were shot and killed in Sousse. Islamic State in Iraq and the Levant (ISIL) claimed responsibility for the attacks in both Bardo and Sousse. During the mission of the Working Group, a state of emergency was declared in the aftermath of the Sousse attack. A state of emergency was also declared in November 2015, after the explosion of a bus resulted in the death of members of the Presidential Guard. Again, ISIL claimed responsibility for the attack.

11. The Working Group noted the widespread impact of radicalization not only in the local attacks in Tunisia but also in the growing number of individuals travelling to fight crises abroad, such as in the Syrian Arab Republic. One of the aims of mission of the Working Group was to understand the motivation of these individuals and the methods of recruitment used, and the human rights impact of this phenomenon.

12. A common factor in the phenomenon of foreign fighters is the radicalization that an individual often undergoes, leading to a decision to commit a terrorist act or to engage in a conflict abroad.

13. In the present report, the Working Group focuses on the form of radicalization that refuses to accept the legitimacy of State institutions and embraces recourse to armed conflict to achieve its aims. In Tunisia, salafists and salafi jihadists are often referred to as AST, whose members have been implicated in political violence and attacks since 2011. During the mission by the Working Group, the term "salafists" was consistently used to refer to those who had been radicalized in their use of violence. The Working Group noted, however, that not all salafi jihadists embraced the use of violence. The previous regime of Ben Ali exerted tight control over religious activities and actors for 23 years. During that time, Tunisian society did not have the religious space for individuals to be able to practice freely and to live by their religious convictions. Mosques were heavily controlled, and religious garb was not encouraged. Some of Tunisians most renowned experts on religion were imprisoned or exiled. Other religious actors, including prominent preachers of salafi jihadism, were subject to similar treatment. The intimidation and direct targeting of salafists

[1] According to the information received by the Working Group during its mission, two prominent opposition leaders were assassinated before the elections, during the rule of the troika. See Amnesty International, Tunisia 2015/2016, Annual Report, and Human Rights Watch, "Tunisia: Investigate Assassination of Opposition Figure", 6 February 2013.

reportedly drove them underground, to continue spreading their ideas in clandestine settings. Given that many such individuals were imprisoned by the Ben Ali regime, prison also became a place of radicalization.

14. One of the first initiatives of the Government after the revolution was the enactment of an order to release more than 500 political prisoners held by the previous regime, and the granting of 8,700 amnesties. Amnesty was granted to persons such as those convicted of violation of the international security of the State (see A/HRC/WG.6/13/TUN/1, paras. 23-30)[2] and persons deemed to belong to the political opposition.

15. The Working Group was informed that some of those released from prison were radical salafists who had become active in converting individuals to violent extremism, to the extent of becoming a serious threat to national security. The persistence of socioeconomic problems, which constituted a major reason for the revolution, together with other social challenges, provided fertile ground for radicalization. Many young and disenfranchised individuals felt alienated under the former regime and were angry at or frustrated with the Government and what they saw as a failure of the State to address their concerns. Some were then drawn to extremist propaganda. With access to the Internet and social media now widespread, the number of young people joining extremist groups and travelling to conflict zones, such as in the Syrian Arab Republic, rose. Radicalization was not only easier but also swifter. The Working Group was informed that radicalizing an individual used to take years; today, in Tunisia, it can take just a few weeks.

16. The Working Group learned that, after the revolution, mosques began to proliferate, and at least 400 of them were under the control of extremists. Groups such as AST reportedly began to disseminate its propaganda by targeting individuals in mosques that were not legally registered, usually located in impoverished or marginalized communities, where school drop-out rates and unemployment are high. In such an environment, frustration and a sense of vulnerability were reportedly manipulated to develop hatred of established systems and support for the establishment of an Islamic State. In addition, groups acting in the guise of charitable organizations were allegedly targeting and converting individuals.

17. In some cases, imams who were not part of the AST network were forced out of their mosques and replaced by members of the group. The Working Group was informed that some people had stopped frequenting their local mosque owing to the extremist views of certain imams. Such venues have, however, become strategic in attracting potential followers given their success in doing so and the difficulty of closing them down, especially those in remote areas. Radicalization has therefore proved more effective outside of the capital and in towns located in the interior of the country.

18. The Working Group also learned of the existence of Koranic nurseries for children and associations for the education of school drop-outs, the curricula of which were in breach of regulations, including seditious discourse. While many have been closed by the Government, some may continue to operate underground or privately.

19. In February 2012, a meeting of the Friends of Syria held in Tunisia was reportedly used to galvanize support to overthrow the Assad regime. The Working Group was informed that the meeting gave greater legitimacy to some jihadists (such as AST), and that networks such as AST had in fact since been dismantled, and that some members had reportedly gone to Libya, while others had been arrested.

[2] The amnesty reportedly also applied to persons convicted in the high-profile "Soliman" case.

20. In the above context, the phenomenon of foreign fighters in Tunisia is rapidly increasing and is today one of the most challenging issues faced by the new Government.

III. Definition and scope

21. The Working Group uses the term "foreign fighters" to refer to individuals who leave their country of origin or habitual residence and become involved in violence as part of an insurgency or non-State armed group in an armed conflict. Foreign fighters are motivated by a range of factors, notably ideology or religious convictions; however, like mercenaries, a foreign fighter may also be drawn to a conflict abroad by the promise of financial gain or reward.

22. Unlike the term "mercenary", which is clearly defined in international law, there is no internationally agreed legal definition of foreign fighter or a specific regime governing them. Foreign fighters are, however, obliged to respect applicable rules of international humanitarian law during armed conflicts. In non-international armed conflicts, non-State armed groups, including foreign fighters, do not enjoy combatant immunity and may be prosecuted under domestic law simply for their participation in hostilities (see A/70/330).

23. The phenomenon of foreign fighters is not new in Tunisia. Tunisians have been known to join conflicts in Afghanistan, Iraq, Chechnya and Bosnia and Herzegovina. What is new, however, is the scope of the phenomenon, both in Tunisia and worldwide. It was estimated that, at the beginning of 2015, the total number of foreign fighters in Iraq and the Syrian Arab Republic exceeded 20,000.[3] Tunisian citizens accounting for one of the largest groups. The Working Group received information according to which there were some 4,000 Tunisians in the Syrian Arab Republic, 1,000 to1,500 in Libya, 200 in Iraq, 60 in Mali and 50 in Yemen. Some 625 have returned from conflict zones and are being prosecuted. Most fighters have reportedly joined *takfiri* or other extremist groups, such as ISIL.

24. The large number of foreign fighters from Tunisia reflects the ongoing radicalization in the country and the susceptibility of individuals, particularly young persons, to violent extremist propaganda. During its visit, the Working Group was also repeatedly informed that, after the revolution, the political situation was unstable, and that, during the rule of the troika, there was little robust or effective control over the activities of extremist groups. Radicalization was therefore left to escalate and fighters were free to leave the country to join the conflict in the Syrian Arab Republic or in Iraq.

IV. International and domestic law

25. Tunisia is not a party to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. The State does not have a specific legal definition of the term "mercenary". It is, however, a party to Protocol I to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts, article 47 of which does provide a definition. The State has not established a legal definition of the term "foreign fighter".[4]

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[3] Peter R. Neumann, "Foreign fighter total in Syria/Iraq now exceeds 20,000; surpasses Afghanistan conflict in the 1980s", ICSR, 26 January 2015.

[4] Article 3 of the new Counter-terrorism Law (2015) does, however, cover organized groups, such as a structured group of three or more persons formed for some time and acting in concert with the aim of

26. The Working Group reiterates that international human rights law continues to apply during situations of armed conflict. Foreign fighters, like any other member of State armed forces or non-State armed groups, are also at a minimum bound by peremptory norms of international law, including the prohibitions on the arbitrary deprivation of life, genocide, slavery, racial discrimination, torture and other cruel, inhuman or degrading treatment, the taking of hostages, imposing collective punishment and the arbitrary deprivation of liberty. When committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, acts such as murder, torture, rape and other forms of sexual violence, or enforced disappearance, constitute a crime against humanity (A/HRC/28/28, para. 41). Furthermore, non-State armed groups that exercise effective control over territory, such as ISIL, are increasingly considered to be bound by international human rights obligations in relation to all people within that territory (see A/HRC/10/22, para. 22, A/HRC/15/48, paras. 19-22, A/HRC/17/44, para. 72 and A/HRC/21/50, para. 10).[5]

27. During armed conflicts, foreign fighters, like any other member of non-State armed groups party to the conflict, are obliged to respect applicable rules of international humanitarian law, in particular the minimum standards enshrined in article 3 common to the four Geneva Conventions of 1949 concerning the treatment and protection of civilians, including the prohibition of murder, torture and taking of hostages. Customary international humanitarian law requires all parties to a conflict to respect the principle of distinction and proportionality in their military operations, and prohibits attacks the primary purpose of which is to spread terror.

28. Acts designated as "terrorist" in peacetime are prohibited by international humanitarian law if committed in armed conflict, including executions of civilians and persons no longer participating in hostilities, hostage-taking, and direct and deliberate attacks against civilians and civilian objects. Simple direct participation in hostilities is, however, not prohibited, nor is it a war crime.

29. Under domestic law, armed opposition fighters could always be prosecuted for mere participation in hostilities, including as an act of terrorism. Nevertheless, international humanitarian law recommends amnesties for mere participation in hostilities. Serious violations of humanitarian law, including acts of terrorism, may amount to war crimes, triggering individual criminal responsibility. Tunisian nationals found culpable of these acts may thus be found criminally responsible on an individual basis.

30. The conflicts in States affected by foreign fighters have caused large movements of refugees, including from the Syrian Arab Republic, Iraq and Libya. States must ensure that measures taken to prevent the entry or transit of suspected foreign fighters do not violate their obligations under international refugee law, in particular the prohibition of non-refoulement.

31. In Tunisia, in 2003, a law on terrorism was enacted to address terrorist attacks instigated in the country by violent extremists. The law was reportedly used to crack down on hundreds of individuals who posed a threat to the Ben Ali regime. Tunisian nationals could also be incriminated for belonging to terrorist groups outside the country, or for receiving training outside. Prior to the revolution, 3,000 people were thought to have been imprisoned under the anti-terrorism law for fighting outside Tunisia. During its visit, the Working Group was informed that a further 1,200 people had been reportedly arrested for

committing terrorist offences on national territory or abroad. Issues concerning transnational crime are also covered under article 3.

[5] See also the report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka, 31 March 2011, para. 188.

terrorist-related acts after the revolution. National law does not cover accountability with regard to the use of social media.

32. The new Constitution, adopted in 2014, recognizes Islam as the official religion of the State, although it also protects the freedom of belief. In addition, it provides for various human rights safeguards, and paved the way for elections to be held later in 2014. Decree No. 2011-88 was also used to suspend organizations reportedly set up with the intention of financing terrorist activities. The Working Group was informed that law No. 26-2015 on terrorism and money laundering was adopted by Parliament on 24 July 2015, and came into force on 7 August (see also paras. 65-71 below).

V. Motivational factors

33. The motivation behind those who decide to join extremist groups abroad is one of particular interest to the Working Group. In Tunisia, the delegation repeatedly heard that the motivational factors responsible for the large number of Tunisian fighters active abroad were both complex and varied, including religious and political ideologies, financial gain, improved economic and social conditions, sense of purpose and sense of belonging, besides *jihad*.

34. Given the multifaceted and complex nature of motivation, there is no typical profile for a Tunisian foreign fighter. The Working Group was informed that most Tunisians travelling to join extremist groups abroad were young, usually between 18 and 35 years of age, and that the most common motivation related to ideological or religious convictions. Many of those headed to the Syrian Arab Republic and Iraq reportedly lacked a sense of purpose or identity, and had turned to extremist ideology and religion to find fulfilment and a sense of belonging.

35. The Working Group was informed that, during the radicalization process, recruiters depict the Syrian Arab Republic as the "Islamic State", affirming that sharia law will rule and that migration to the "State" was an obligation for all "good Muslims". Fighters were promised that they, as martyrs of Islam, would achieve *shahada* (martyrdom for Islam), and be welcomed to paradise.

36. The Working Group was informed that, initially, those leaving for the Syrian Arab Republic did so to assist the Syrians to fight the Assad regime, motivated by the desire to help in a situation of perceived injustice and tyranny. In some cases, fighters were reportedly incited by some Tunisian authorities. The fighters initially joined Al-Nusrah or other rebel groups (before ISIL became established), going to camps hosting wounded fighters or other victims to give them aid. What began as a perceived duty of humanitarian assistance subsequently evolved into a life spent in the battle zone without any prospect of return.

37. The deteriorating economic situation, high unemployment and other social grievances also adversely affected university graduates, now deprived of any hope for a stable career, despite their qualifications. According to the Organization for Economic Cooperation and Development (OECD), in Tunisia, a third of young people are unemployed and 62 per cent of graduates are unable to find work.[6] The resulting disillusionment and frustration has made young people more susceptible to radicalization and subsequent engagement in the Syrian Arab Republic as foreign fighters.

[6] OECD, *Investing in Youth: Tunisia, Strengthening the Employability of Youth during the Transition to a Green Economy* (OECD Publishing, Paris, 2015).

38. Many foreign fighters from a poor socioeconomic background were enticed into groups such as ISIL by the promise of financial reward, such as stipends or wages that they would be given upon their arrival in the conflict zone. The Working Group was informed that the first stage of recruitment focused on building armed forces, largely motivated by religious ideology, while the second stage focused on the recruitment of skilled persons, who were mainly motivated by large salaries and identified as supporting the development of a new "State".

39. Not all foreign fighters, however, come from a poor socioeconomic background. Some come from affluent, middle-class and well-educated families; indeed, some have a scientific or technical background, such as doctors, dentists, engineers and architects.

40. The Working Group was informed of cases of professionals offering their skills to extremist groups, such as ISIL. Some were reportedly offered jobs with a starting salary of $1,200 per month. Some were even promised as much as $10,000 per month for their professional skills, particularly in information technology. Some may also be paid a daily living allowance, while some are promised houses. Goods may also be delivered to families of foreign fighters, depending on their needs.

41. Some fighters were reportedly not paid at all. Others financed their own travel, but once in the Syrian Arab Republic they were provided with clothing, a mobile telephone and living expenses, according to need. The Working Group learned about offers of specialized training, such as the upgrading of computer skills, as a way to attract fighters. Cases of weapons and other combat training have also been reported.

42. Women, present in smaller numbers, may have also joined for similar reasons, as well as for humanitarian or private reasons, such as joining their husbands or partners. Most women reportedly travel to serve as nurses, but also to contract marriage. The Working Group was informed of one foreign fighter who allegedly married twice – once in the Syrian Arab Republic, and once in Iraq. Ever since the Government of Tunisia began to impose travel bans, however, travelling has become more difficult for women, who require written authorization. In such cases, women travel in groups to avoid detection. The Working Group was also informed of the growing number of entire families travelling to conflict zones, given that the ultimate goal is to establish a State, and family involvement was thus important. There have also been cases of fathers taking children to the Syrian Arab Republic. Other individuals have become foreign fighters, drawn by promises of a new and exciting life, or by their belief in the cause espoused by ISIL.

43. The educational background of foreign fighters is also relevant. The Working Group was informed on several occasions that individuals with a science background were more likely to be radicalized than those with a background in arts or liberal studies. There is a growing discussion on the importance of education in tackling the root causes or the motivational factors that have led people to become foreign fighters. It has also highlighted the need for counter-narratives against extremist ideologies that are rampant in the country, and the need to engage all actors in society, including teachers, religious leaders and psychologists.

44. Many of those who arrive in the Syrian Arab Republic and join the ranks of ISIL reportedly cannot return, given that any attempt to return would subject them to the risk of being killed by fellow ISIL members.

45. The Working Group was also informed of a number of people charged with the intention of going to the Syrian Arab Republic to fight. Some of these cited arrest as the reason for not leaving, while others stated that they were too scared to fight and face death, or had been discouraged by reports of armed groups turning against each other.

46. Any one or a combination of the above factors may be relevant in each case; the profiles of foreign fighters may therefore be significantly diverse. Any effort to address this phenomenon must for this reason be holistic, multifaceted and strategic.

VI. Recruitment

47. The Working Group was informed that the recruitment of fighters in Tunisia is varied, often rapid and increasingly sophisticated. The process often involves foreign terrorist groups or individuals establishing themselves in the country. Large amounts of funding are received from outside countries, including for non-governmental associations, purportedly charitable organizations, political parties, travel, social media and families of foreign fighters. Funding is reportedly also earmarked for building mosques and recruitment venues.

48. Smuggling networks reportedly operate to take recruits across borders and sometimes through areas where trafficking in people and illicit goods may not be effectively controlled, particularly in the south, near the border with Libya. According to testimonies received by the Working Group, the routes most commonly taken to the Syrian Arab Republic is through Libya and Turkey, then over the border at Antakya. The Working Group was also informed of alternative routes through Morocco, Algeria and Serbia, countries that do not have visa requirements for Tunisians.

49. The Working Group was informed that persons who fought in the Afghanistan war and subsequently benefited from an amnesty after the revolution have used their background and experience to spread propaganda on violent extremism.

50. The Working Group heard allegations that Tunisian business persons had taken fighters to the border. After the revolution in Tunisia, a Syrian businessman was also reported to be actively recruiting in the country until information regarding his activities was made known to the authorities. Some fighters go with friends, including from the same neighbourhood; in one case, a group of four friends reportedly travelled together. Some bring over their friends once they have arrived in the Syrian Arab Republic.

51. Some fighters have been sustained financially by their families; in some cases, fighters ask their friends to collect money on their behalf from their parents and to bring it to them. Reportedly, mosques controlled by extremists would arrange for foreign fighters from the mosque to travel. The Working Group was informed of a case where, during Ramadan in 2013, caravans were organized to take as many as 100 fighters from one mosque to the Syrian Arab Republic.

52. In one village of 10,000 inhabitants, 12 young people were reported to have gone to the Syrian Arab Republic to fight. Recruiters often operate in communities without the families of potentially fighters being aware. One man informed the Working Group that his son, a university student who was financially comfortable, had told him that he was leaving to attend a conference in Libya and was subsequently located in the Syrian Arab Republic.

53. Some fighters travel abroad to fight with the consent of their parents; others are recruited by teachers. The Working Group was informed of one university teacher who radicalized students while supposedly tutoring them in mathematics. Even when the operation of these networks is reported to the authorities, arrests are often not possible owning to lack of evidence. The Working Group was however informed that, recently, more arrests are being made.

54. Young people are exposed to messages conveyed by ISIL on YouTube, Facebook and other social media, accessed in Internet cafes. The Working Group was informed that people who "like" a video on Facebook may be contacted by recruiters. Others may simply

be drawn to jihadist websites. Once recruiters have established communication, they reportedly provide users with videos and articles on extremist ideology.

55. The Working Group was informed that some potential foreign fighters show signs of their growing involvement with extremist ideology, for example by growing a beard, demanding that female family members wear a veil, forbidding the use of televisions or ignoring the advice of family members, while others show no outward sign of their radicalization.

56. When converts to the cause decide to travel, they are reportedly sent information about the trip and the route, and the persons they will need to meet. Not all information is given immediate; detailed instructions and guidance are only provided for the following stage of the journey. Direct contact may be made through telephone numbers shared on the Internet, or during face-to-face meetings with contacts made through social media.

57. Recruiters are reportedly paid by the number and qualifications of the persons that they recruit. For this reason, they apply strategies specific to the person by, for example, incentivizing them to work for the "Islamic State" or to fight, depending on the proclivities of the individual. The Working Group was informed that recruiters may be paid from $3,000 to $10,000 for each potential fighter, depending on their qualifications. Skilled recruits were sought to consolidate and be citizens of the new "State".

58. The Working Group was informed that, in Tunisia, one effect of increasing measures against travel to the Syrian Arab Republic was that many fighters join groups in Libya instead, or local terrorist groups. The period of radicalization was reported as sometimes being quite short, lasting from a few weeks to three to four months, and to no more than a year.

VII. Human rights issues concerning foreign fighters

59. The Working Group was informed that, in conflict zones, many foreign fighters are involved in direct hostilities or combat, and have therefore been reported as perpetrators of human rights violations, such as of the rights to life and physical integrity, and torture.

60. The Working Group heard allegations of indiscriminate shelling of cities by foreign fighters. These acts may amount to gross human rights violations,[7] war crimes, and crimes against humanity or genocide. Ensuring the accountability of foreign fighters involved in such abuses and crimes is critical. Whenever possible, the State of nationality or permanent residency should investigate and prosecute fighters involved in such acts.

61. Non-State armed groups also recruit foreign fighters under the age of 18. The Working Group was informed during the mission of boys as young as 17 being recruited to fight in the Syrian Arab Republic. Human rights law prohibits the recruitment of children under 18 into State armed forces and recruitment of children under 18 years by non-State armed groups. Both the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism and the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities have reported that young boys and girls under the age of 18 are targeted to travel abroad. ISIL is reportedly using significant numbers of minors as fighters (see S/2015/123, para. 40 and S/2015/358, paras. 28 and 30).

[7] See OHCHR and the United Nations Assistance Mission for Iraq, Report on the Protection of Civilians n Armed Conflict in Iraq: 11 September – 10 December 2014, February 2015.

62. The right to self-determination is broadly understood as the right of peoples to determine their own political and economic system, including by participatory political processes. The beneficiaries of this right are the people, not the State. Given, however, that virtually all non-State armed groups describe their struggle as an effort to exercise peoples' right to self-determination, foreign fighters may be motivated to join a non-State armed group to help them to exercise that right, or to fight on behalf of armed groups claiming to assert it. They may also, however, impede the exercise of this right. Foreign fighters often have markedly different ideological and political motivations and aspirations to those of local armed groups. Their arrival may even transform the domestic secular-nationalist or democratic causes that initiated the conflict, and lead to the introduction of more radical methods of warfare. They may also prolong conflicts, complicate efforts to mediate and negotiate a political settlement, erode national and international support for the opposition, or undermine the cohesion of the armed opposition.

63. The Working Group also learned of allegations of human trafficking in camps in the Syrian Arab Republic run by foreign fighters, where people were sold or passed on to one side of the conflict or the other, for propaganda or other reasons. Children were also reportedly sold to people in other countries.

VIII. Measures

64. The Working Group was informed by officials that, in response to the large number of Tunisian fighters engaged in the Syrian Arab Republic and Iraq and involved in terrorist attacks that have destabilized Tunisia, the Government was taking robust measures to monitor the travel of individuals to the Syrian Arab Republic and Iraq and implementing strengthened border controls. While acknowledging the legitimate need of the Government to counter terrorism and to ensure national security for its people, the Working Group also raises concerns about gaps that may lead to restrictions on fundamental human rights. During its meetings, the Working Group learned that no specific national strategy or plan of action for countering the phenomenon of foreign fighters has been prepared.

65. After the Bardo attack in March 2015, the Parliament drafted a bill focusing on countering terrorism. During its visit, the Working Group was informed that the adoption of the bill was pending and hoped that the new law would reflect comprehensive consultation with all stakeholders and the full application of international human rights standards, including with regard to excessive use of force, torture, arbitrary detention, fair trial and the right to privacy. It also hoped that the process of deliberation would not be unduly influenced, however understandably, by the pressure of public, political and international actors.

66. On 24 July 2015, the bill went before the Parliament, which adopted it as law No. 26-2015 against terrorism and money laundering, effectively superseding the law adopted under the former regime in 2003.

67. The Working Group recognizes that the new law provides for some human rights guarantees and safeguards. It has concerns, however, regarding the serious human rights implications of some provisions. For example, some are broad and ambiguous and could potentially be used to prosecute acts that are not clearly or precisely defined by law as terrorist.[8]

[8] Article 13 lists terrorist offences as including "causing harm to public or private property, vital resources or infrastructure or means of transport or communication, or computer systems or public services".

68. The new law also extends the limit of pre-charge detention to up to 15 days, during which time a suspect remains incommunicado and may not have access to family members or a lawyer, or be brought before a judicial officer. Other safeguards and guarantees for a fair trial could potentially be violated by provisions in the law that provide for closed trials, the non-disclosure of information that can be used to incriminate the accused, the use of anonymous witnesses, and excessive discretion of judges.

69. The Working Group recalls that the right to liberty and the right not to be arbitrarily deprived of liberty in international law recognize that anyone arrested or detained on criminal charges must be brought promptly before a judge or judicial officer. The Human Rights Committee, in its general comment No. 35 (2014), ruled that any delay longer than 48 hours must be exceptional and justified (CCPR/C/GC/35, para. 33).[9] The right to fair trial also includes the right to be tried by an independent and impartial tribunal; any restrictions to this right must be exceptional and comply with the principles of proportionality, necessity, non-discrimination and equality of arms, all of which should be subject to judicial review.

70. The new law also has implications for the right to privacy. Rather than placing surveillance decisions under the exclusive oversight of independent judges, it extends the power to order such measures to prosecutors. Concerns regarding the right to freedom of expression are linked also to the prohibition on "praising and glorifying terrorism", which is laid out in the law in broad terms that fail to meet the requirements set by international law.[10] In this case, a person who is found to have publicly or clearly praised a terrorist crime, their members or their activities could be sentenced up to five years of imprisonment. The Working Group is concerned that such a provision could be used to stifle or to restrict legitimate attempts by person or groups to exercise their right to free expression.

71. The Working Group also notes that an aim of the new counter-terrorism law is to align legislation with Security Council resolution 2178 (2014) in its provisions to prosecute foreign fighters. In resolution 2178 (2014), which is binding on Member States, the Council decided that Member States should, consistent with international human rights law, international refugee law and international humanitarian law, prevent and suppress the recruiting, organizing, transporting or equipping of foreign terrorist fighters.

72. The limitations of Security Council resolution 2178 (2014) were also acknowledged by the authorities in Tunisia. In particular, the definition of foreign fighter is deemed too vague and inadequate, a view that the Working Group shares. Indeed, persons travelling to combat areas for reasons other than terrorism, such as relatives of foreign fighters or those providing medical care, could, if the definition of the resolution is strictly applied, be incorrectly identified and prosecuted as foreign fighters.

73. The Working Group wishes to highlight the fact that, in its resolution 2178 (2014), the Security Council also recognized that addressing the threat posed by foreign terrorist fighters requires comprehensively addressing underlying factors, including by preventing radicalization to terrorism, countering violent extremism, which may be conducive to terrorism, countering incitement to terrorist acts motivated by extremism or intolerance, promoting political and religious tolerance, economic development, social cohesion and inclusiveness, ending and resolving armed conflicts, and facilitating reintegration and

[9] See also the International Covenant on Civil and Political Rights, art. 9.

[10] In its general comment No. 34, the Human Rights Committees clarifies that offences such as "encouragement of terrorism", and "extremist activity", and praising, glorifying or justifying terrorism should be clearly defined to ensure that they do not lead to an unnecessary or disproportionate interference with freedom of expression (CCPR/C/GC/34, para. 46).

rehabilitation. For this reason, the Working Group points out that any attempt to prosecute aspiring and returning foreign fighters, which could have a radicalizing effect, must be balanced with social integration and rehabilitative measures. The step taken by the Government of Tunisia on 4 July 2015 to declare a state of emergency, for a renewable period of 30 days, was one immediate measure to ensure security and greater control. Given that certain freedoms are curtailed during a state of emergency, such as on the freedom of movement, freedom of assembly and freedom of expression, and the potential application of the death penalty, the Working Group urges the authorities to implement these measures in conformity with international norms and standards.

74. The Working Group makes a similar recommendation with regard to administrative measures restricting the travel of persons under 35 years of age to certain destinations without parental approval. Such measures have an impact on the right to freedom of movement, as enshrined in article 12 of the International Covenant on Civil and Political Rights. While the right to freedom of movement is not absolute, limitations must be lawful, pursuant to a legitimate aim and necessary to achieve that aim. The same considerations must apply to measures by which travel agencies alert authorities when certain Tunisian citizens purchase an airline ticket for Turkey. It is estimated that some 9,000 people have been prevented from leaving the country pursuant to the travel ban. The Ministry of the Interior is reportedly taking measures that can result in certain individuals being deprived of their freedom of movement, without being informed and with no access to appeal.

75. The Working Group received reports during its visit that terrorist suspects had been arrested, tortured and released, which raised further questions regarding the infringement of the right to a fair trial and to freedom from arbitrary detention. The Working Group urges the Government to apply relevant national legislation and international human rights standards fully. In this regard, it welcomes the initiatives on human rights training for law enforcement officials.

76. Broadened surveillance powers may also lead to interference with the right to privacy. State authorities must ensure that surveillance measures are necessary and proportionate to the specific risk being addressed, and are accompanied by adequate procedural safeguards and effective and independent oversight.

77. The Working Group was pleased to learn of efforts by the authorities to strengthen airport and border controls, including through the detention of members of recruitment networks.

78. With regard to unregistered mosques used as radicalization centres, the Working Group learned that 80 such mosques had been closed down in the aftermath of the Sousse incident in June 2015. The Working Group urges the Government to be vigilant, and encourages it also to continue its efforts to ensure that mosques and religious centres are established in accordance with relevant laws and are not being used as radicalization centres for violent extremism.

79. The efforts of the Government to root out extremist groups operating in Tunisia are also commendable. Decree-law No. 2011-88 of December 2011 has been a useful initiative targeting extremist organizations operating in the guise of charitable organizations. Initiatives have reportedly also been taken by the Ministry of Finance to investigate the funding of non-governmental organizations. The Working Group was informed that, when an audit of an organization's financial records prove links to radical or extremist activities, the organization's accounts are frozen. A legal procedure thereafter determines whether the operations of the organization will be suspended. While the vetting of dubious organizations is important, caution should also be taken to ensure that legitimate organizations are not affected adversely by the procedure. In this context, the Working

group urges the active participation of legitimate members of civil society in a holistic approach to countering the issue of foreign fighters.

80. The Working Group was informed of similar measures taken in prisons to detain terrorist suspects separately, rather than together. The measure reportedly helped to limit the spread of terrorist doctrine in the prison, even though the risk remains.

81. The Working Group was informed that the Ministry of Women's Affairs and the Family provides families of foreign fighters with support. Psychosocial support in local communities, and education and awareness are crucial in building a sense of social cohesion and national identity among people, especially the young.

82. With regard to the prosecution of foreign fighters, the Working Group was informed that the process is often stymied by the lack of evidence, owing in particular to the transnational nature of activities. Bilateral arrangements among States are subject to claims of sovereignty, and restricted by the limited capacities of countries in conflict. The Working Group believes that a framework of international cooperation on the sharing of evidence and other relevant information among countries will be a critical step in ensuring accountability for those active in or supportive of foreign fighter networks.

83. The Working Group was informed that the Government lacks the necessary material resources, capacity, equipment and database access to upgrade and modernize its services to respond effectively to terrorist threats. Effective data management demands secure transmission. Current bilateral programmes, while useful, do not allow for a global approach. The Working Group therefore recommends that the international community support the Government in its efforts by providing it with support, technical assistance and capacity-building.

84. The Working Group also learned that, in aiming to counter the dissemination of extremist narratives on the Internet, the Government is also considering amendments to its laws on cybercrime in general. It stresses that any amendments should be in keeping with human rights standards on the freedom of expression.

85. The global economic crisis has prompted mass migration from countries in the region towards Europe. The Working Group was informed that Tunisian migrants attempting to reach Europe often take the same route as fighters heading for the Syrian Arab Republic, and may be mistaken for them, and thus be arrested and detained on suspicion of terrorist-related offences. Measures should therefore be taken to ensure that migrants are clearly identified and not taken for foreign fighters.

IX. Returnees

86. Smugglers on the border between the Syrian Arab Republic and Turkey were reported to arrange for the entry and return of foreign fighters without them having to pass through checkpoints. The Working Group was informed that, in one case, smugglers were allegedly paid $2,000 for bringing three people back over the border.

87. Returnees are reportedly questioned at border checkpoints. The Working Group was informed that networks are becoming better structured and that fighters now take different routes to the one traditionally taken to the Syrian Arab Republic, through Libya and Turkey. Other fighters may also return by sea. Persons identified as fighters are investigated by the authorities; those found not to be fighters are released and monitored; should monitoring eventually reveal that they are actually involved in underground activities, further action is taken. The Working Group was informed that some 625 foreign fighters had returned from conflict zones and were being prosecuted.

88. Some foreign fighters reportedly return to Tunisia secretly; some even report their own death. In such cases, returnees might become a part of a sleeper cell with the aim of eventually conducting terrorist activities on behalf of extremist and *takfiri* groups based in Libya, the Syrian Arab Republic or other countries. The attacks on the Bardo museum in Tunis in March, and in Sousse in June, may have been the outcome of this type of operation.

89. There have been allegations that returnees may also enter the country through the territorial expansion of extremist groups such as ISIL, which is reported to have taken control of Sirte in Libya. From such a base, ISIL may coordinate with Tunisian terrorist returnees.

90. During its visit, the Working Group also learned of cases of returnees who, having repented of their decision to go abroad to fight, attempt to return to Tunisia. The reasons for returning may include lack of belief in ISIL ideology, disillusionment, the fragmentation of efforts caused by fighting among groups for power, injury or direct experience of the gruesome reality of combat.

91. The Working Group was informed that many returnees are traumatized and isolated, and may feel stigmatized in their communities. It was therefore pleased to learn of the efforts of authorities to consider alternatives to prosecution for returnee fighters, including social, cultural and religious approaches. In this regard, the Ministry of Women's Affairs and the Family was implementing a programme to counsel women allegedly involved in "sexual jihad", whereby they volunteer to become the comfort partners of foreign fighters abroad, and to develop a pilot prevention initiative involving counselling and coaching for families. The Ministry is also planning to conduct a strategic study and a survey to determine the impact of social issues on this phenomenon, the results of which will be compiled in a database. A programme on countering radicalization is also being prepared, in coordination with other ministries, including with a view to encouraging children to become involved in family activities rather than in those on the Internet.

92. Before the development of the above-mentioned framework, some returnees decided to return to the front to fight, given that no alternative strategy for reintegration or socio-psychological support was offered. The Working Group therefore reiterates its recommendation that the Government strive to achieve a balance between punitive and social measures, thereby addressing both the immediate and deeper structural causes of the phenomenon of foreign fighters.

93. Returnees could also be usefully provide testimony and counter-narratives to the messages of incitement disseminated by recruiters, using sophisticated communication channels and social media.

94. The Working Group was alerted to the significant shortage of funding available for the above-mentioned activities. Logistics equipment for, for example, monitoring travel was inadequate. A database of members of suspected terrorist groups has nonetheless been created, and is used to, inter alia, identify patterns of movement.

95. The Working Group was informed about the alleged imprisonment in 2012 of 43 young men from Tunisia who had reportedly been arrested at the border with the Syrian Arab Republic by Syrian authorities. Despite having been charged with trespassing, which carries a six-month sentence, and not having been convicted of any offence, they have remained in prison for more than three years. It was alleged that, in June 2013, the Syrian authorities had granted the prisoners an amnesty, but that the conditions of release had not been met by their Tunisian counterparts. Family members of those detained had approached the authorities in both the Syrian Arab Republic and Tunisia to request their release, but have been unsuccessful, despite assurances.

96. During its visit to Mornaguia prison, the Working Group learned that some 1,000 of the 6,389 inmates detained there had been charged with terrorism and were awaiting trial. Reportedly, the number has now risen to 2,000, charged under the counter-terrorism law.

97. Returnees at the prison included a number of foreigners. They included nationals of Algeria, Brazil, France, Germany, Libya and Morocco.

X. Conclusions and recommendations

98. **In addressing the negative impact and complexities of the issue of foreign fighters, the Working Group stresses that efforts must be global, holistic, multi-dimensional, and strategic. A national strategic plan should take into account the diverse profiles of fighters and recruitment methods, be designed to have immediate, medium- and long-term impact, comprise a balance of punitive and social measures, and ensure the comprehensive adoption of human rights standards in all its elements.**

99. **Civic education is a crucial means for teaching the population the democratic values to which post-revolution Tunisia may aspire. Successfully addressing problems relating to radicalization and social unrest should be an imperative engagement not only for the State but also for all sectors of Tunisian society. Preventative measures can be implemented by supporting programmes conducted by non-governmental organizations on education, counselling, coaching, and cultural and social interaction, creating a sense of belonging, citizenship training, and by mitigating extremist reactions to perceived provocations.**

100. **In the medium to long term, a strong economy and job growth, and adequate State social services, especially in marginalized areas, would serve to fill the socioeconomic vacuum that recruiters try to manipulate. In the measures taken to strengthen the socioeconomic situation in the country, special efforts should be made to invest in the youth population – the most vulnerable to radicalization – by improving their skills and thus increasing their employment opportunities. This could include a focus on vocational training and entrepreneurship.**

101. **A coordinated effort for de-radicalization will be critical in addressing effectively the problem of foreign fighters. Counter-narratives to violent extremist propaganda should be encouraged and fostered.**

102. **In the view of the Working Group, the Government of Tunisia should open dialogue and engagement with disaffected groups and Islamic extremist advocates as a way to build mutual understanding and prevent extremist activities from going underground. This is an opportune moment for Tunisian society to develop a comprehensive strategy focusing on the political inclusion of diverse religious groups, which can advocate for tolerance and provide space for the exchange of ideas and possible solutions to important problems, such as radicalization.**

103. **With regard to legislative measures, such as the new law against terrorism and money laundering, provisions with human rights implications – including definitions of terrorism and terrorist-related crimes – should be amended to comply fully with the State's obligations under international law and the Constitution, thus ensuring that the exercise of the right to freedom of expression is not unduly restricted.**

104. **Furthermore, under the new law, any person arrested or detained on charges of terrorism should have the right to prompt access to legal counsel, including during interrogation, while family members should be notified of the arrest and obtain access to the detainee. The Working Group urges compliance with international human**

rights standards with regard to safeguarding against arbitrary deprivation of liberty and detention.

105. The Working Group cautions that oppressive anti-terrorism laws can have the effect of fuelling, rather than deterring, further radicalization. It is therefore important that a balance be achieved between punitive and social measures in countering terrorism and foreign fighters, and that opportunities for rehabilitation be ensured.

106. In the short term, improved police services and intelligence capability will allow for effective monitoring. Ongoing human rights training of law enforcement officials, combined with capacity-building by the international community, can help to ensure that practices are undertaken in keeping with international standards.

107. A holistic approach requires greater coordination across State sectors and institutions. The Working Group encourages further cooperation, as is currently being considered for ministries working on returnee programmes, and between the Ministry of Justice and the Ministry of the Interior on prison management.

108. The efforts made by civil society entities to counter hate speech in the media can serve to defuse tensions, and should be supported. Other media education initiatives, including on the use of alternative language to that of the "Islamic State", may also neutralize the sense of obligation instilled. The involvement of returnees sharing their disillusionment and insights from their experience, notably through social media and other popular forms of communication, might also act as a deterrent.

109. The Working Group was informed repeatedly that many foreign fighters undertake training in Libya before going to the Syrian Arab Republic, and that the instability in Libya has fuelled a significant degree of the support activities involved in the training and travel of foreign fighters. A resolution to the conflict and political impasse in that country would thus benefit considerably the counter-terrorism efforts of Tunisia. Every effort should be made to address, including through dialogue, what is increasingly a regional issue.

110. Given the difficulties reported in investigating and prosecuting fighters for activities committed abroad, an international framework of cooperation for sharing of evidence among participating countries would be a critical step in ensuring the accountability of those active in or supportive of foreign fighter networks.

111. During its research on the issue of foreign fighters, the Working Group received information on a number of existing rehabilitation and reintegration programmes that the Government of Tunisia may wish to consider for application to its national context. The Aarhus programme in Denmark is aimed at persuading and assisting individuals to return, while the Hayat programme in Germany focuses on deterring aspiring foreign fighters from leaving (and if they do leave, from engaging in acts of violence, and persuading them to return home in coordination with the authorities). In the United Kingdom of Great Britain and Northern Ireland, the Al-Furqan voluntary programme in prisons uses imams to challenge extreme views through Islamic teaching, while the Channel programme is a multi-agency scheme under the Home Office that works with individuals vulnerable to radicalization.

112. Ultimately, only a resolution to the conflicts raging in the Syrian Arab Republic and Iraq will bring down the demand for foreign fighters and related activities. Political commitment and efforts, including for the sustained peace and recovery of these States, and accountability and reparations for human rights violations perpetrated during the course of the conflict, are the only effective and sustainable

way to counter the negative impact of the phenomenon of foreign fighters on human rights.

113. **The revolution in Tunisia has been largely seen as having ushered in a new, more democratic process. The Working Group supports efforts towards the further development of a democratic culture, and thereby a more sustainable approach to the phenomenon of foreign fighters.**